

**KUTAK ROCK LLP**

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*Counsel to Schottenstein Property Group, Inc.*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

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In re:

CIRCUIT CITY STORES, INC., *et al.*,

Debtors.

Case No. 08-35653-KRH

Chapter 11

Jointly Administered

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**RESPONSE AND OPPOSITION TO LIQUIDATING TRUST'S EIGHTH  
OMNIBUS OBJECTION TO LANDLORD CLAIMS SEEKING TO  
AMEND/EXPUNGE CLAIM 13166 FILED BY  
SCHOTTENSTEIN PROPERTY GROUP, INC.**

Schottenstein Property Group, Inc. ("SPG"), by counsel, having filed a proof of claim identified and included in the above captioned *Liquidating Trust's Eighth Omnibus Objection to Landlord Claims* (the "Objection"), does hereby oppose and respond, as set forth below:

1. Circuit City Stores, Inc. and certain of its affiliated entities (collectively, "Debtors") filed a petition for relief on or about November 10, 2008 ("Petition Date"). After the Petition Date, Debtors continued to be in possession of and to operate their business.
2. On or about May 1, 2009, Beavercreek filed a proof of claim, number 12770 (the "Beavercreek Claim"), amending claim number 9243 and setting forth a general unsecured claim in the amount of \$721,557.53 representing sums due under the

Debtor's lease with Beavercreek and rejection damages due under that lease. A copy of the Beavercreek Claim is attached as **Exhibit A**.

3. On or about April 30, 2009, SPG filed a proof of claim, number 13166 (the "Administrative Claim"), seeking post-petition administrative claims for the Beavercreek location. A copy of the Administrative Claim without Exhibits is attached as **Exhibit B**.

4. The Objection seeks to disallow and expunge the Administrative Claim stating that the Debtor is dealing with the landlord under Claim 12770. However, the Debtors have mischaracterized the claims, confusing the Beavercreek Claim as both general unsecured and administrative. Debtors admit having to "deal directly" with the landlord on the amounts owed by the Debtors for the same store location for post-petition amounts due and accordingly no basis exists for expunging the Administrative Claim. In other words, the Debtors admit owing general unsecured, rejection, and administrative damages for the Beavercreek location – these amounts are the subject of both the Beavercreek Claim and the Administrative Claim.

5. Further undermining the Debtors' effort to expunge the Administrative Claim is that, in the same Objection, the Debtors seek to reduce the amount of the Administrative Claim – specifically seeking to reduce February rent and CAM charges and admitting to the validity of the real property taxes. The Administrative claim sets forth in detail the amounts owed and to the extent the Debtors' books do not equal these calculations, SGP demands strict proof thereof. Furthermore, the Debtors' do not explain their own calculation of amounts due, do not allege payment of administrative expenses,

nor provide any documentation. A better description of the nature of the dispute is needed from the Debtor.

6. Based on the above, the Objection should be denied, without further expense, time and effort to the claimant and to the estates of these Debtors.

**WHEREFORE**, SGP respectfully requests that this Court deny the relief requested in the Objection as it relates to the Claims in its entirety; and such other and further relief as is just and proper.

Dated: Richmond, Virginia  
April 7, 2011

Respectfully submitted,

/s/ Kimberly A. Pierro

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*Counsel to Schottenstein Property Group,  
Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury that on April 7, 2011, a true and exact copy of the foregoing was served via ECF notification to the following:

Jeffrey N. Pomerantz, Esq.  
Andrew W. Caine, Esq.  
Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Boulevard  
Los Angeles, CA 90067-4100

Lynn L. Tavenner, Esq.  
Paula S. Beran, Esq.  
Tavenner & Beran, PLC  
20 North Eighth Street, 2<sup>nd</sup> Floor  
Richmond, VA 23219

/s/ Kimberly A. Pierro

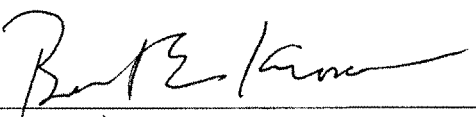
Counsel

**DECLARATION**

I declare under penalty of perjury and pursuant to 28 U.S.C. § 1746 that to the best of my knowledge the foregoing is true and correct.

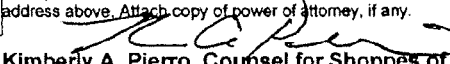
Dated: April 7, 2011

**SCHOTTENSTEIN PROPERTY GROUP, INC.**

By:   
Name: Benton E. Kraner  
Title: President & C.O.O.

#12770

B 10 Official Form 10 (12/07)

UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF VIRGINIA		PROOF OF CLAIM
<b>Debtor against which claim is asserted: (Check only one box below.)</b> <div style="display: flex; flex-wrap: wrap;"> <div style="width: 33%;"> <input checked="" type="checkbox"/> Circuit City Stores, Inc. (Case No. 08-35653)  <input type="checkbox"/> Circuit City Stores West Coast, Inc. (Case No. 08-35654)  <input type="checkbox"/> InterTAN, Inc. (Case No. 08-35655)  <input type="checkbox"/> Ventoux International, Inc. (Case No. 08-35656)  <input type="checkbox"/> Circuit City Purchasing Company, LLC (Case No. 08-35657)  <input type="checkbox"/> CC Aviation, LLC (Case No. 08-35658)                 </div> <div style="width: 33%;"> <input type="checkbox"/> CC Distribution Company of Virginia, Inc. (Case No. 08-35659)  <input type="checkbox"/> Circuit City Stores PR, LLC (Case No. 08-35660)  <input type="checkbox"/> Circuit City Properties, LLC (Case No. 08-35661)  <input type="checkbox"/> Orbyx Electronics, LLC (Case No. 08-35662)  <input type="checkbox"/> Kinzer Technology, LLC (Case No. 08-35663)  <input type="checkbox"/> Courchevel, LLC (Case No. 08-35664)                 </div> <div style="width: 33%;"> <input type="checkbox"/> Abbott Advertising, Inc. (Case No. 08-35665)  <input type="checkbox"/> Mayland MN, LLC (Case No. 08-35666)  <input type="checkbox"/> Patapsco Designs, Inc. (Case No. 08-35667)  <input type="checkbox"/> Sky Venture Corporation (Case No. 08-35668)  <input type="checkbox"/> XSStuff, LLC (Case No. 08-35669)  <input type="checkbox"/> PRAHS, INC. (Case No. 08-35670)                 </div> </div>		
<b>NOTE: This ins. should not be used to make a claim for administrative expenses arising, after the commencement of the case. A request may be filed pursuant to 11 U.S.C. § 501(a).</b>		
Name of Creditor (the person or other entity to whom the debtor owes money or property): <b>SHOPPES OF BEAVERCREEK LTD</b>	<input checked="" type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim Court Claim Number: <b>9243</b> (If known) Filed on: <b>1/30/09</b>	
Name and address where notices should be sent: <b>NameID: 4528980 PackID: 292155</b> <b>SHOPPES OF BEAVERCREEK LTD</b> Attention: <b>KIMBERLY A. PIERRO, ESQ.</b> <b>KUTAK ROCK LLP</b> <b>1111 E. MAIN STREET, STE 800</b> <b>RICHMOND, VA 23219</b> Telephone number: <b>(814) 449-4631</b>	<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.	
Name and address where payment should be sent (if different from above): Telephone number:	<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.	
<b>1. Amount of Claim as of Date Case Filed: \$ 721,557.53</b> If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5.		
<input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		
<b>2. Basis for Claim: pre-petition rent and 502(b)(6)</b> (See instruction 12 on reverse side.)		
<b>3. Last four digits of any number by which creditor identifies debtor</b>		
<b>3a. Debtor may have scheduled account as:</b> (See instruction #3a on reverse side.)		
<b>4. Secured Claim (See instruction 14 on reverse side.)</b> Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ _____ Annual Interest Rate _____ % Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
<b>6. Credits</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim. <b>7. Documents:</b> Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:		
Signature: the person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. <div style="display: flex; justify-content: space-between; align-items: center;"> <div style="width: 60%;">                     Date: <b>4/30/09</b>    <b>Kimberly A. Pierro, Counsel for Shoppes of Beaver Creek Ltd.</b> </div> <div style="width: 35%; text-align: center;"> <b>RECEIVED</b>  <b>MAY 01 2009</b>  <b>KURTZMAN CARSON CONSULTANTS</b> </div> </div>		

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both 18 U.S.C. 152 and 157.



**KUTAK ROCK LLP**

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SHEREE T. EDINGTON  
sheree.edington@kutakrock.com  
(804) 644-1700

April 30, 2009

**VIA FEDEX**

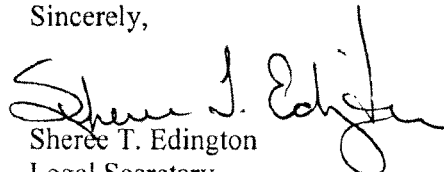
Circuit City Claims Processing  
c/o Kurtzman Carson Consultants LLC  
2335 Alaska Avenue  
El Segundo, California 90245

Re: Jubilee-Springdale, LLC and Shoppes of Beaver Creek Ltd.

Dear Sir or Madam:

Enclosed please find Proof of Claims for the two above-referenced creditors. Do not hesitate to contact us should you have any questions or concerns.

Sincerely,

  
Sheree T. Edington  
Legal Secretary

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Enclosures

cc: Kimberly A. Pierro, Esq.

**In re Circuit City Stores, Inc.**

**Proof of Claim #9243 as Amended**

Pre-petition rent: \$ 43,853.54

Damages pursuant to 11 U.S.C § 502(b)(6):

15% of remaining term of lease: 1.35 years \$ 677,703.99

**Total: \$ 721,557.53**



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In re:

CIRCUIT CITY STORES, INC., *et al.*,  
  
Debtors.

Case No. 08-35653-KRH  
Chapter 11  
Jointly Administered

**APPLICATION OF SCHOTTENSTEIN PROPERTY GROUP, INC.  
FOR AN ORDER ALLOWING ADMINISTRATIVE CLAIM RELATING TO POST-  
PETITION CHARGES UNDER LEASE FOR STORE #3196 (BEAVERCREEK, OHIO)**

Schottenstein Property Group, Inc. ("Schottenstein"), by counsel, seeks an Order allowing its administrative claim for charges accruing post-petition under the lease attached as Exhibit 1 (the "Lease") pursuant to 11 U.S.C. §§ 365(d), 503(b) and 507(a). In support of this Application, Schottenstein states the following:

**BACKGROUND**

1. On November 10, 2008, Circuit City, Inc. and its affiliated debtors (the "Debtors") filed a voluntary petition under Chapter 11 of Title 11 of the United States Code in this Court.

2. Schottenstein is the managing agent/landlord for a shopping center known as Store # 3196 located in Beavercreek, Ohio (the "Leased Premises"). The Debtors leased this property (the "Lease" attached as Exhibit 1).

3. The Debtors rejected the Lease and the effective rejection date was February 21, 2009 (the "Rejection Date") pursuant to an Order of this Court.



**RELIEF SOUGHT**

4. Schottenstein seeks an allowed administrative claim for charges that accrued post-petition and through the Rejection Date under the Lease. The charges are detailed as follows:

February 2009 rent	20,916.79
Estimate pro-rated 2009 CAM	1,328.11
Pro-rated real property taxes 2009	9,043.54
Total	31,288.44

5. Section 365(d)(3) mandates that the Debtors pay all post-petition obligations arising under the Lease until the lease is rejected. In re Klein Sleep Products, Inc., 78 F.3d 18, 30, n.7 (2nd Cir. 1996); In re Dial-A-Tire, Inc., 78 B.R. 13, 16 (Bankr. W.D.N.Y. 1987) (Section 365(d)(3) requires continued performance under a lease until the lease is rejected). The rejection of a lease and the termination of obligations under Section 365(d)(3) do not occur until an order is entered rejecting the lease. In re Thinking Machines Corp., 67 F.3d 1021, 1028 (1st Cir. 1995). Moreover, Section 503(b) of the Bankruptcy Code permits landlords to obtain administrative claims for post-petition charges for rents, taxes, CAM charges, etc. See 11 U.S.C. § 503(b) (“After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including-- (1)(A) the actual, necessary costs and expenses of preserving the estate . . .”).

6. There is no real dispute that the Debtors’ post-petition use of the Leased Premises qualifies as an “actual, necessary” cost of preserving the estate. Zagata Fabricators, Inc. v. Superior Air Prods., 893 F.2d 624, 627 (3d Cir. 1990) (“There is no question, of course, that the payment of rent for the use and occupancy of real estate...is clearly an ‘actual, necessary’ cost of preserving the estate.”). Accordingly, the charges above are proper, allowable administrative expenses. In re ZB Co., Inc., 302 B.R. 316, 319 (Bankr. D. Del 2003) (“Section 503(b)(1)(A)

grants an allowed administrative claim for the 'actual, necessary costs and expenses of preserving the estate...).

**WHEREFORE**, Schottenstein requests the Court to grant the relief herein and to award such other relief as this Court deems appropriate.

**SCHOTTENSTEIN PROPERTY GROUP, INC.**

/s/ Loc Pfeiffer

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Peter J. Barrett (VA 46179)

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*Counsel to Schottenstein Property Group, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury that on April 30, 2009, a true and exact copy of the foregoing was forwarded via ECF notification to necessary parties, including the following: (i) the Office of the United States Trustee for the Eastern District of Virginia, (ii) the Debtors and bankruptcy co-counsel, and (iii) counsel to the Official Committee of Unsecured Creditors.

/s/ Loc Pfeiffer

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